

MILITARY JUSTICE COMMAND DISCIPLINARY OPTIONS FOR THE RESERVE COMPONENT

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This is intended to be a guide, not a substitute for the applicable regulations.

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MILITARY JUSTICE - COMMAND DISCIPLINARY OPTIONS FOR THE RESERVE COMPONENT

1. INTRODUCTION

a. There are two options available to a commander when dealing with a problem Soldier. These options are **Punitive Actions** under the Uniform Code of Military Justice (UCMJ) [nonjudicial punishment (Article 15) and courts-martial] and **Adverse Administrative Actions**.

b. Preliminary Actions. When a Soldier is suspected of committing improper or illegal behavior, is under investigation by military (i.e., CID, AR 15-6) or civilian authorities, or displays any problems of a disciplinary nature, the commander must take certain actions before deciding what disciplinary action to take.

(1) Conduct a Commander's Inquiry. The commander's inquiry is informal. The Commander may verbally establish the facts or interview the involved parties. Remember, if you question a Soldier suspected of committing an offense under the UCMJ, you must advise the Soldier of his rights UP Article 31, UCMJ. DA Form 3881 will be used for this purpose and is self-explanatory.

(2) AR 15-6 Investigations.

(a) In some cases, a more extensive investigation conducted UP AR 15-6 may be necessary. The commander appoints a member of the command, senior to the Soldier, as an investigating officer. (IO) The IO should gather all reasonably available evidence bearing on guilt or innocence and any evidence relating to aggravation, extenuation, or mitigation. The IO must seek consult with a JA before beginning the investigation. Legal review upon completion is required when the case involves serious or complex matters, or where the findings and recommendations may result in adverse administrative action or be relied upon in actions by higher headquarters.

(b) Generally, an informal AR 15-6 investigation will be done. The Commander must appoint the IO by memorandum. It should include the specific regulations or directive under which appointed, the purpose of the investigation, its scope, power and the nature of the findings and recommendations required.

(3) Suspend favorable personnel actions. AR 600-8-2, *Suspension of Favorable Personnel Actions (Flags)*, paragraph 1-10, requires commanders to initiate a flag when a Soldier commits improper or illegal behavior, is under investigation by military (i.e., CID, AR 15-6) or civilian authorities, fails the APFT, or is put on the Army weight control program. Use DA Form 268. The flag prevents reenlistment, promotion, extension, reassignment, schools, etc, unless the flag is for APFT failure and weight control. Flags will be reviewed monthly and must be lifted when the punishment is completed or final action taken. Soldiers pending administrative discharge should be flagged under elimination, not adverse action.

(4) Report Derogatory Information. AR 380-67, *Personnel Security Program*, requires commanders to report credible derogatory information (See paragraph 2-200 for examples) through the security manager to the Central Clearance Facility (CCF). Use DA Form 5248-R, Report of Unfavorable Information for Security Determination. (See para. 8.101). Commanders can suspend a Soldier's access to classified information pending a final determination by CCF once the investigation of the circumstances is complete. Commanders must recommend whether the Soldier's clearance should be revoked or not. The report is required even if the Soldier does not have a security clearance in case the Soldier later applies for one.

2. PUNITIVE ACTIONS [USED FOR VIOLATIONS OF THE UCMJ ONLY]

a. Jurisdiction.

(1) In order to take punitive action against a Soldier for violating the UCMJ, you must first determine

if you have jurisdiction over the person. This is defined as the legal right, power, and authority of the military to try a criminal case and render a valid judgment against a Soldier.

(2) The Soldier must be subject to the UCMJ at the time of the offense and at the time of punitive action. According to Article 2, UCMJ, reservists are subject to the UCMJ only while they are on active duty (AD), active duty for training (ADT), annual training (AT), or inactive duty training (IDT) (weekend drills). Reservists can be involuntarily recalled to active duty for the purpose of court-martial, investigation under Article 32, UCMJ, or imposition of nonjudicial punishment with respect to an offense that was committed while the person was on AD, ADT, or IDT.

(3) Generally, any "commanding officer" is authorized to impose Article 15 punishment. A "commanding officer" refers to a commissioned officer or warrant officer who by virtue of rank and assignment exercises primary command authority, to include UCMJ authority, over a military organization or a prescribed territorial area which pertinent official directives recognize as a "command." Soldiers can also be attached for UCMJ to a command if so directed in their orders.

(4) The Commander can impose non-judicial punishment on TPU Soldiers while he is on orders for AD, ADT or AT, or during an IDT. However, if the Soldier is an Active Component (AC) or Reserve Component (RC) Soldier on active duty (including AGR), the Commander must be on ADT or AD orders. AR 135-18, para.2-10.

b. Nonjudicial Punishment under Article 15, UCMJ.

(1) Sources of Law.

(a) The framers of the UCMJ recognized the commander's need to impose swift punishments upon Soldiers of the command for minor offenses. Article 15 of the UCMJ provides a framework for imposition of nonjudicial punishment for the commission of an offense under the UCMJ.

(b) Part V of the Manual for Courts-Martial, United States 1984 (MCM) sets out the specific procedures pertaining to nonjudicial punishment. AR 27-10, Military Justice, Chapter 3, provides detailed guidance on the use of nonjudicial punishment.

(2) Benefits of Using Nonjudicial Punishment. Nonjudicial punishment gives the Soldier the opportunity to rehabilitate himself by preserving his record from the stigma of a court-martial conviction and enhances military efficiency by disposing of minor offenses in a manner requiring less time, money, and personnel than a trial by court-martial.

(3) Policy for Use. Nonjudicial punishment is proper in all cases involving minor offenses under the UCMJ in which non-punitive measures are inadequate or inappropriate. Non-judicial punishment should be administered at the lowest level of command commensurate with the needs of discipline, and after considering the nature and circumstances of the offense, the age, the record, the maturity, and the experience of the offender.

(4) Article 15 Refusals. The Commanding General, 81st RSC, has the authority to convene a Special Courts-Martial. This will be used primarily when a Soldier refuses an Article 15 and a courts-martial is more appropriate than adverse administration action. Because of proof and jurisdiction requirements, always contact your servicing JA before initiating an Article 15.

(5) Punishments. There are four general types of Article 15 punishments available under formal Article 15 proceedings: censure, loss of liberty, forfeiture of pay, and reduction.

(a) Censure. This is either an oral or written admonition or a reprimand. An admonition warns that if the particular conduct is repeated, it will not be tolerated and more severe action may be taken against the Soldier. A reprimand is a warning about past misconduct. A reprimand will be filed with the Article 15.

(b) Loss of Liberty. There are four different punishment possibilities under loss of liberty. None are

feasible for a reserve Soldier during weekend drills, as punishment must be served during normal IDT period. Restriction and extra duty may be appropriate during AT.

i. Restriction. This is the least severe form of loss of liberty. The Soldier is ordered to remain within specified limits for a specific period of time (place of duty, mess, barracks). The limits may be changed as long as the new limits are not more restrictive than the original limits. The individual continues to perform military duties. A Soldier living off post normally cannot be restricted.

ii. Extra Duty. Extra duty may be performed, in addition to regular duties, for a specific length of time. Extra duty may not constitute cruel or unusual punishment, punishment not sanctioned by service customs, consist of a duty which is normally intended as an honor, or involve the Soldier as a personal servant. NCO's can only be given duties commensurate with their rank, supervising enlisted also performing extra duties. Extra duties cannot extend beyond the normal IDT drill period.

iii. Correctional Custody. This punishment may be imposed upon enlisted Soldiers in the grade of E-3 or below. The purpose of this punishment is to provide close supervision not amounting to confinement and its attendant stigma. This punishment is infrequently imposed due to the lack of adequate facilities.

iv. Arrest in Quarters. This punishment is reserved for officers or warrant officers. While in this status the individual may not exercise command. If a superior commander, knowing of the arrest status, assigns command duties to the officer, the arrest terminates.

(c) Forfeiture of Pay. This punishment is a permanent loss of pay. If a reduction in grade is accompanied by a forfeiture of pay, then the forfeiture amount is based on the lower pay grade. Forfeitures are stated in whole amounts to be deducted from the base pay for an AC Soldier. Per Finance, they will calculate the amount to be deducted from a TPU Soldier's pay. The forfeiture is applied to the Soldier's pay for every period of duty the Soldier performs during the time of the forfeiture, up to two months. If the Soldier does not drill for the next two months, no money will be taken. See AR 27-10 para. 21-9.

(d) Reduction in Grade. This is the most severe form of nonjudicial punishment. It affects not only the amount of pay the Soldier will receive but often results in loss of privileges and responsibilities.

i. A reduction may be imposed only by a commander who has the authority to promote to the grade from which they are demoting the Soldier.

ii. A Soldier in the grade of E-5 and E-6 may only be reduced one grade during peacetime. Only HQDA can reduce a Soldier E-7 through E-9. For AGR Soldiers, only HQDA can reduce an E-6 and up. Officers cannot be reduced in rank.

(e) Any of the above punishments can be suspended for up to six months. Suspension of punishment gives the Soldier a probationary period during which he may show he deserves a remission of the suspended punishment. If the Soldier commits a new offense under the UCMJ during the period of suspension, the commander should vacate the suspension and have the Soldier serve the full punishment. The commander can also give another Article 15 for the new misconduct. While Soldiers can appeal the imposition of punishment, there is no appeal from a vacation of suspension.

(6) Types of Article 15s. (AR 27-10, Chapter 3) There are two types of Article 15s: summarized and formal.

(a) Summarized Article 15.

i. A summarized Article 15 is the least severe form of Article 15. Any commander in the offender's chain-of-command may impose it. Punishment is limited to 14 days restriction, 14 days extra duty, and an oral reprimand. Use DA Form 2627-1. Instructions are on the back of the form. See AR 27-10, Appendix B for a guide to conducting nonjudicial punishment proceedings.

ii. Soldiers have fewer rights under the summarized Article 15 than the formal Article 15. For instance, they have no right to consult with counsel, only 24 hours to decide whether to accept the Article 15, and no right to a spokesperson.

(b) Formal Article 15. There are two types of formal Article 15s, company grade and field grade. Use DA Form 2627 for both. Instructions are on the back of the form. See AR 27-10, Appendix B for a guide to conducting nonjudicial punishment proceedings.

i. A company grade Article 15 is imposed by a company grade officer. Moderate punishment may be imposed under a company grade Article 15.

ii. A field grade Article 15 is imposed by a field grade officer. This is the most severe form of Article 15.

(7) Maximum Punishment. The maximum punishments for enlisted Soldiers are listed in the chart below.

<u>Punishment Imposed</u>	<u>Company Grade Officers</u>	<u>Field Grade Officers</u>
Admonition/Reprimand	Yes	Yes
AND		
Extra Duties	14 days	45 days
AND		
Restriction	14 days	60 days
or		
Correctional Custody		
(E-1 thru E-3)	7 days	30 days
AND		
Reduction (E-1 thru E-4)	One grade	one or more grades
AND		
(E-5 thru E-6) (AGR E-5)	N/A	One grade
Forfeiture	7 days pay	1/2 of 1 month for 2 months

(8) Filing of the Article 15. If punishment is imposed, inform the Soldier of the filing decision. The imposing commander makes the decision concerning where an Article 15 is to be filed subject to the following:

(a) For Soldiers E-4 or below, regardless of time in service, Article 15s (formal or summarized) will be filed in the local nonjudicial punishment files and not the local file (201) or the Official Military Performance File (OMPF), regardless of the number of Article 15s. Cross out Line 5 on the DA 2627.

(b) For Soldiers E-5 or above, a summarized Article 15 is filed in the local files. However, a formal Article 15 must be filed in either the restricted or performance fiche of the Soldier's OMPF. Only one Article 15 received while in the rank of E-5 or above may be filed in the restricted fiche. All others must be filed in the performance fiche. A Soldier can apply to remove an article 15 from his performance fiche to his restricted fiche, but it is not automatic. Once filed, it will remain throughout the Soldier's career.

(c) An AGR Soldier who receives an Article 15 during his current term of AGR service, which is filed in the performance fiche of his OMPF, cannot reenlist in the AGR program unless this disqualification is waived. (See 135-18 table 2-5 rule E). The waiver authority is CAR-USAR. The Soldier can reenlist in the USAR in TPU or IRR status.

(9) Appeals for Article 15s. (AR 27-10, chap 3). Soldiers have the right to appeal an Article 15. All appeals will be documented on DA Form 2627 or DA Form 2627-1 and forwarded through the imposing commander to the superior authority. Legal review is required before the superior authority acts when the punishment includes reduction by one or more pay grades from E-4 and above, or exceed 7 days

forfeiture of pay, or 14 days of either extra duty or restriction. The JA will render this advice orally or in writing on the DA Form 2627.

c. Summary Courts-Martial (SCM)

(1) A SCM may be effectively used where reduction in rank of a senior NCO is contemplated for their misconduct. A summary court officer must be appointed and the Soldier has no right to be represented by counsel. The punishments are similar to a field grade Article 15. Maximum punishment is 30 days confinement for E-4 and below, 2/3 forfeiture of pay per month for 1 month, reduction of E-1 through E-4 to E-1, and reduction of E-5 through E-9, one grade. Because the Soldier may refuse the SCM proceedings, it should only be used after consultation with your servicing JA.

d. Crimes

(1) Part IV of the Manual for Courts-Martial lists all offenses that are punishable under military law. These are called the punitive articles and contain both common law crimes and military crimes. They also contain general articles for conduct that is prejudicial to good order and discipline, service discrediting, or that constitutes a non-capital crime not punishable under another article of the UCMJ.

(2) In order for a person to be guilty of an offense, the government must prove each and every element of the offense beyond a reasonable doubt. If an offense has five elements, and the evidence supports only four of the elements, then the person charged with that offense is not guilty. The following is a list of common military crimes which are frequently the basis for Article 15 UCMJ. The charge is written in the form of a specification, which includes all required elements.

(a) Article 86 - Absence without leave. In that SPC Jane Smith, did, at Fort Huachuca, AZ, on or about 15 Jul 9X, without authority, fail to go at the time prescribed to PT formation at 0600 at building 56780.

(b) Article 89 - Disrespect to a superior commissioned officer. In that SPC Jane Smith, did, at Fort Huachuca, AZ, on or about 15 Jul 9X, behave herself with disrespect toward CPT John Doe, her superior commissioned officer, then known by SPC Jane Smith to be her superior commissioned officer, by saying to him "I don't care if you are an officer, I still think you're fat" or words to that effect.

(c) Article 91 - Insubordinate conduct toward/disobeying an order of a noncommissioned officer. In that SPC Jane Smith, having received a lawful order from SFC Mary Jones, a noncommissioned officer, then known by SPC Jane Smith to be a noncommissioned officer, to "At Ease", an order which it was her duty to obey, did, at Fort Huachuca, AZ, on or about 15 Jul 9X, willfully disobey the same.

(d) Article 92 - Failure to obey a general order or regulation. In that SPC Jane Smith, did, at Fort Huachuca, AZ, on or about 15 Jul 9X, violate a lawful general regulation, to wit: paragraph 1-10, AR 600-85, dated 21 Oct 88, by wrongfully having a blood alcohol level of .10%, while on duty.

e. Relationships Between Soldiers of Different Rank (Fraternization) (AR 600-20, para. 4-14)

(1) Relationships between Soldiers of different rank are prohibited if they: compromise, or appear to compromise, the integrity of supervisory authority or the chain of command, cause actual or perceived impartiality of unfairness, involve, or appear to involve, the improper use of rank or position for personal gain, or are perceived to be, exploitative or coercive in nature, create an actual or clearly predictable adverse impact on discipline, authority, morale, or the ability of the command to accomplish its mission.

(2) Dating, shared living accommodations other than those directed by operational requirements, and intimate or sexual relationships between officers and enlisted personnel are prohibited. This prohibition does not apply to personal relationships outside of marriage between members of the RC, when the relationship primarily exists due to civilian acquaintanceships, unless the individuals are on active duty (other than AT). Furthermore, this prohibition does not apply to personal relationships outside of marriage between members of the AC and members of the RC when the relationship exists primarily

due to civilian association and the RC member is not on active duty (other than AT).

(3) Fraternization may be punished under Article 92, UCMJ, as a violation of a lawful general regulation or under Article 134, UCMJ.

3. Adverse Administrative Actions.

a. Adverse administrative actions are considered corrective actions that can be used to deal with problem Soldiers. The primary goal of an adverse administrative action, short of separation, is to correct, educate, and train Soldiers who have rehabilitative potential. Adverse actions are not punishment (nonpunitive) and should be used to the fullest extent possible before resorting to more serious measures, i.e., Article 15s and courts-martial.

b. Criminal behavior under the UCMJ is not required although using adverse actions as a disciplinary tool for UCMJ violations is very effective and efficient and may accomplish the same goals of punishment. However, punishment may only be imposed by an Article 15 or a courts-martial. There are no jurisdiction problems inherent to imposing adverse actions. Adverse actions may be given for off duty conduct (DUI conviction or drug use) and for UCMJ violations where an article 15 is impractical.

c. Types of Adverse Administrative Actions. There are various administrative actions available. They include counseling, corrective training, withdrawal of privileges, bars to reenlistment, written reprimands, and separation actions.

(1) Counseling. If misconduct or a deficiency is noted, it should be recorded on DA Form 4856. Specifically, the date and circumstances of the problem should be noted in part II, and the date and summary of any verbal counseling given should be noted in part III. The plan of action should specify what corrective action is necessary to correct the problem. The Soldier can comment on the counseling. If the Soldier refuses to sign the counseling statement, record that fact where his signature would go. Negative counseling is used for any problem or deficiency to include; poor attitude, being out of uniform, being late for formation, being disrespectful, or being involved in a minor UCMJ offense.

(2) Corrective Training. (AR 600-20). Whenever corrective training is imposed, it must have a reasonable relationship to the Soldier's deficiency. For example, remedial PT would be appropriate corrective training for a Soldier who failed his PT test.

(3) Bar to Reenlistment (AR 140-111). The bar to reenlistment is not a punitive action. Imposition of a bar to reenlistment does not preclude administrative separation at a later date. Normally the bar should be initiated prior to a separation or judicial/nonjudicial action because it is intended to put the Soldier on notice that he or she is not a candidate for reenlistment and may be a candidate for separation if the circumstances that led to the bar to reenlistment are not overcome. Any flag previously imposed should be lifted once the commander decides to process the bar.

(a) Soldiers who do not meet high standards of moral character, personal competence, and demonstrated adaptability (unsuitable or untrainable) can be barred from reenlistment. (See AR 140-111 para. 1-30 (c) for an extensive list of examples). Use DA Form 8028-R, Bar to Reenlistment Certificate. A bar is mandatory for 2d APFT failure when discharge is not initiated, and for Soldiers who do not make satisfactory progress in the weight control program after 6 months, unless the commander initiates reassignment procedures per AR 140-10, or separation proceedings per AR 135-178, chapter 6 or 14.

(b) Any commander in a Soldier's chain of command may initiate a bar to reenlistment, but normally a Soldier in a unit for less than 90 days or in the last 30 days of assignment will not be barred. Also, an AGR Soldier can be barred from reenlisting in the AGR program but can be allowed to reenlist in TPU or IRR status. Annotate the correct box on DA Form 8028-R.

(c) After initiation, the bar should be served on the Soldier. The Soldier has 30 days (AGR 7) to submit a response. The Soldier has no right to counsel, but should not be denied access if one is available. If the Soldier cannot be located, service can be made by certified mail. The bar certificate is

then forwarded through the chain of command to the approval authority.

(d) The approval authorities for the bar to reenlistment are:

i. Soldiers with less than 10 years active federal service at ETS, the first LTC commander in chain. (Cannot both initiate and approve).

ii. Soldiers with 10 but less than 18 years and 20 or more years of active federal service at ETS, the first general officer in chain of command or CG.

iii. Soldiers with 18 but less than 20 years of active federal service at ETS, HQDA.

(e) Appeals. From the time the bar is approved, the Soldier has 30 days (AGR 7 days) to submit an appeal. Each commander in the chain of command must personally endorse appeals. Final approval of an appeal must be at least one approval level higher than the original bar approval authority.

(f) Commanders will review the bar every 6 months, and 30 days before the Soldier's PCS or ETS. If the basis for the bar no longer exists, it must be removed. If the commander does not remove the bar, he must insure the Soldier's personnel records are properly annotated and inform the Soldier on DA Form 4856, IAW AR 135-178, para 1-12, that the bar has been reviewed and will remain unless recommended for removal. If a commander feels the bar should be removed, he will forward this request through the chain of command. Any commander who does not agree can disapprove the request. The bar removal authority is the commander noted in subparagraph d, above. If, after the second 6-month review, the bar remains, the commander will initiate proceedings to discharge the Soldier under AR 135-178 or reassign him to the IRR pursuant to AR 140-10 chapter 4.

(4) Memorandum of Reprimand (AR 600-37, para. 3-4). Written reprimands are a leadership tool used to officially document misconduct or poor performance in a Soldier's official file.

(a) For enlisted Soldiers, the Soldier's immediate commander or any higher commander in the same chain of command, a supervisor, school commandant, general officer, or GCMCA can initiate the memorandum.

(b) For officers, the person's immediate commander or higher level commander in the same chain of command, general officer, rater, intermediate rater, or senior rater can initiate the memorandum.

(c) Contents of Memorandum. The memorandum of reprimand can be based on any type of misconduct or poor performance. The specific instances of misconduct or poor performance should be cited. Almost any misconduct can be the basis for a reprimand. A General Officer Letter of Reprimand is mandated by regulation in all DUI cases. The memorandum of reprimand must state that it is being imposed as an administrative measure and not as punishment under Article 15, UCMJ.

(d) Acknowledgment and Rebuttal. The Soldier must be given a copy of the written reprimand and has the right to rebut it in writing. The Soldier has no right to counsel, but should not be denied access if one is available.

(e) Filing. The memorandum of reprimand can be filed in either the Soldier's Military Performance Records Jacket (MPRJ) or the OMPF.

i. MPRJ. Done by the immediate commander or a higher level commander, general officer, and General Courts-Martial Convening Authority (GCMCA) (for officers- include rater, intermediate rater, and senior rater). Reprimands may be filed in the MPRJ for a period not exceeding 3 years or until reassignment to another GCM jurisdiction. Written reprimands may be removed from the MPRJ by appeal to the commander who first directed its filing or a higher level commander.

ii. OMPF. Only a general officer or GCMCA can direct the filing of a memorandum of reprimand in the OMPF. If the immediate commander desires that the reprimand be filed in the Soldier's OMPF, the

commander must coordinate the reprimand with servicing JA for presentation to the general. The Soldier can appeal directly to the DA Suitability Evaluation Board to remove a reprimand or move it from the performance fiche to the restricted fiche.

(5) Reductions in Rank (AR 140-158), chapter 7.

(a) An administrative reduction is effective for inefficiency as shown by a pattern by Soldier of inability to perform the duties and responsibilities of their grade and MOS. A Soldier can also be reduced for longstanding unpaid personal debts with no reasonable attempt to pay, unsatisfactory participation, (failure to attend or complete AT and missing 9 MUTA's in a year), and criminal conviction by a civilian court. Except for civilian criminal convictions, Soldier's can only be reduced one grade. AR 140-158 **does not** authorize a reduction for a single act of misconduct.

(b) The reduction authority is:

- | | |
|----------------|--|
| i. E-2 - E-4 | Company Commander |
| ii. E-5 - E-6 | Field Grade Commander in a LTC position. |
| iii. E-7 - E-9 | Commander in COL position |

(c) IRR, AGR and IMA Soldiers E-6 and up are entitled to a reduction board. TPU Soldiers E-5 and up are also entitled to a board. Soldiers can waive the board proceedings. The Soldier also has the right to appeal the reduction.

(d) Notice to Soldier will be in writing at least 30 working days before the board. This notice can be served in person or delivered to the Soldier in person or by certified mail; restricted delivery; or return receipt requested. The Soldier has the right to counsel. Contact your servicing JA before initiating any reduction action requiring a board.

(e) The Convening Authority ensures the board is composed of officers and enlisted with mature judgment, senior in grade or date of rank of the Soldier being considered for reduction, with at least one member of the reserve component. (For AGR, one member must be AGR). For inefficiency cases, one member must be thoroughly familiar with Soldier's field of specialization. The board must have at least 3 voting members composed of officers and enlisted, with at least one member of the same sex. Soldier can request one member of the same minority group.

(f) Failure To Meet Conditional Promotion NCOES Requirements. [para 7-12(d)]. A Soldier who accepts a promotion with the condition that he or she must enroll in, and successfully complete, a specified NCOES course (para 1-8b.1), and either fails to meet those conditions, is subsequently denied enrollment, becomes an academic failure, does not meet graduation requirements, or is declared a "No-Show", will be reduced to the grade and rank held prior to the conditional promotion. Board action is not required for this reduction.

(6) Removal From Promotion Lists (AR 140-158, paragraph 3-41).

(a) Occasionally, adverse information is discovered concerning a Soldier recommended but not yet promoted. When this occurs, and the information would appear to warrant removal from the promotion selection list, disposition will be considered by the standby advisory board. The board's recommendation will be submitted to the promotion authority for a final decision. A recommendation for removal may be disapproved at any level of command.

(b) All recommendations which are based on reprimands, admonitions, censures, and other nonpunitive measures will be processed per AR 600-37, paragraph 2-6.

(c) Before submitting removal action to the promotion authority, the commander initiating the action will send the action in writing to the Soldier concerned. The Soldier may submit rebuttal statements within 15 days after receipt of the written notification. A Soldier who elects not to rebut will submit a signed statement that he or she has reviewed the proposed action and elects not to submit a rebuttal.

(7) Relief For Cause (AR 600-20, para 2-15). This is action taken to remove an officer or NCO from their assigned position. An OER or NCOER will be done in all cases where a Soldier is relieved for cause.

(a) Relief of Officers (AR 623-105). A commander may relieve an Officer from specific duty or assignment where that officer has failed in his performance of duty or non-compliance with professional officer standards. These standards apply both on and off duty. Unless the reason for relief is due to misconduct, the Officer should first be given written notice of the intent to relieve, and given the opportunity to correct his performance. USARC policy requires that while any commander may temporarily suspend a subordinate Officer from command, final action to relieve an Officer from command will be made in writing by the first general officer in the Officer's chain of command.

(b) Relief of NCO's. (AR 623-205). Anyone in a NCO's rating chain may remove an NCO from a rateable assignment when that NCO's personal or professional characteristics, conduct, behavior or performance warrant removal.

(c) The relief of officers and NCO's for sub-standard performance should only be done if the Soldier is unable to perform the duties and responsibilities of his grade and/or MOS, after training, coaching, and counseling has occurred. The Soldier should first be notified in writing of the intent to relieve with recommendations to improve performance.

(d) If a relief for cause is contemplated based on an investigation under AR 15-6, the referral and comment procedures of that regulation must be followed prior to initiating or directing the relief. This does not preclude a temporary suspension from assigned duties pending application of the procedural safeguards contained in AR 15-6.

(8) TPU- Enlisted Administrative Separations (AR 135-178). AR 635-200 governs AGR Soldiers. For TPU Officers, see 135-175, and for AGR Officers, see 600-8-24.

(a) An administrative separation action is an effective way to separate a problem Soldier in an efficient, speedy manner. AR 135-178, Separation of Enlisted Personnel, (29 Dec 00), provides detailed guidance concerning the initiation and processing of a separation action.

(b) Each discharge action has a provision for the characterization of service available or appropriate. There are three types of characterization of service a Soldier can receive if he is separated from the Army. These are Honorable, General (under honorable conditions), and Under Other Than Honorable Conditions.

i. Honorable. This connotes service with distinction and carries no adverse affects.

ii. General (under honorable conditions). This carries some moral stigma that the discharged Soldier was not fit for military service. This is warranted when significant negative aspects of the Soldier's conduct or performance outweigh positive aspects of his military record. The Soldier may lose some Veterans benefits, such as the GI bill.

iii. Under Other Than Honorable Conditions (OTH). This is the least favorable administrative characterization of service an enlisted Soldier can receive. It is used if the misconduct or behavior is a significant departure from standards expected of Soldier (violence results in serious bodily injury, abuse of position of trust, drug offenses, acts seriously endanger safety/welfare to others or security of U.S.). The Soldier is denied most VA benefits and may be precluded from federal employment.

(c) Counseling with a view toward separation (AR 135-178, para. 2-4 (b)). The following actions **require** that a Soldier be counseled about his deficiencies or misconduct at least once prior to initiating separation action: Involuntary separation due to parenthood (para 6-5); Physical or mental conditions (para 6-7); Entry Level Status Performance and Conduct (chap 8); Unsatisfactory performance (chap 9); Minor disciplinary infractions or a pattern of misconduct (para 12-1 a and b), Failure to meet weight

standards (chap 16). The Soldier must be given a reasonable time to rehabilitate himself. If the behavior continues, separation should be initiated. Each counseling session will be recorded in writing and filed in unit personnel files. Normally, DA Form 4856 will be used. The counseling must include the following:

- i. the reason for counseling;
 - ii. the fact that continued behavior of a similar nature or additional misconduct may result in separation, and;
 - iii. the type of characterization of service that may be issued and the effect of each type if such action is taken and separation accomplished. (Loss of military and VA benefits and negative impact on civilian employment).
 - iv. that an OTH is a conditional bar to VA benefits, notwithstanding any action by a Discharge Review Board.
- (d) If the Soldier does not appear for drill, the counseling should be put in memorandum format and mailed by certified mail, with a response suspense date.
- (e) The separation actions used most frequently are:
- i. Chapter 9, Unsatisfactory Performance. Used when it is determined that the Soldier will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier (e.g., adverse impact on morale, discipline, present/future disruptive influence, and ability to do duties in future and advance is unlikely). The Soldier can receive either an honorable or a general discharge. Counseling prior to initiating the chapter action is required.
 - ii. Chapter 12, Separation for Misconduct. There are four categories under this chapter.
 - 1 Paragraph 12-2, Conviction by a civilian court. Used if a punitive discharge would be authorized for the same conduct under the UCMJ, the sentence includes confinement for more than 6 months, or if the specific circumstances of the offense warrant discharge.
 - 2 Paragraph 12-1a b, Minor Disciplinary Infractions. Used when Soldier has committed only minor military infractions. Counseling prior to initiating the chapter action is required.
 - 3 Paragraph 7-11b, Pattern of Misconduct. Used when there is discreditable involvement with civil authorities, conduct prejudicial to good order/discipline, or violations of the UCMJ, Army regulations, law, tradition or customs. Counseling prior to initiating the chapter action is required.
 4. Paragraph 7-11c, Commission of Serious Offense. Used when Soldier has committed a violation of the UCMJ or a comparable civilian offense, for which a punitive discharge is authorized. Counseling is not required prior to initiating separation. If the misconduct is abuse of illegal drugs, para 12-1(d) requires discharge action be initiated on all first time drug offenders, grades E-5 and above, all soldiers with 3 or more years total military service, and all second time drug offenders. Others may be processed for discharge or retained.
 - iii. Chapter 13, Unsatisfactory Participation in the Ready Reserve. Used when the soldier is an unsatisfactory participant as prescribed in AR 135-91 (chap 4); and attempts to have Soldier respond or comply with orders or correspondence have resulted in Soldier's verbal or written refusal, or a second notice by certified mail refused, unclaimed, undelivered or Soldier has changed his address without notice to the unit.
- (f) The approval authority for all discharges for all TPU Soldiers is the area commander. He can delegate this to any subordinate general officer commander who has a SJA or legal advisor.

Exception: If the Soldier has more than 18 but less than 20 years of qualifying service for retired pay, the

Secretary of the Army or his representative must approve the action. Send requests to HQDA.

(g) It is possible for a Soldier to upgrade a general discharge or an OTH discharge to an honorable discharge on petition to the Army Discharge Review Board and the Army Board for the Correction of Military Records if certain basic criteria are met after discharge from the service (e.g., enrollment in college). However, it is not automatic and upgrades are granted on an infrequent basis. (See para 2-12).

(h) Administrative Board. A Soldier who is pending separation is entitled to an administrative board if either the commander recommends an OTH and/or advises the Soldier that he can receive an OTH discharge or the Soldier has 6 or more years of total active and reserve service at the initiation of the separation action.

(i) There is no appeal process to either the boards findings or recommendation or to the approval authority's decision.

4. Unlawful Command Influence

a. Extent of Authority. The commander's discretion to impose disciplinary action on a Soldier under his command is personal and must not be fettered by any superior's "guidelines" or "policies." Care must be taken that "policy letters" or commanders guidance does not mandate disciplinary action. ("anyone who does X will get a letter of reprimand").

b. Superior commanders may not tell a subordinate commander when to impose an Article 15 or how much punishment should be assessed.

c. Superior commanders may totally withhold the subordinate commander's imposition authority; partially limit imposition authority in a particular category of offenses (e.g., all drug cases), or a certain category of personnel (e.g., all officer cases)